

## MEMORANDUM

**TO:** The Directors

**FROM:** Rose Jeffrey, Corporate Secretary

**DATE:** December 12, 2023

**RE:** **Board of Directors' Meeting – Wednesday, December 13, 2023**

**CC:** Curtis Archer  
Carlyne Turner-Beverly

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Notice is hereby given to all Directors of the Harlem Community Development Corporation ("Harlem CDC") that a Board of Directors meeting, duly called by the President of the Corporation, will be held on **Wednesday, December 13, 2023 at 10:00 A.M.** in the offices of the Corporation, located in the Adam Clayton Powell Jr. State Office Building at 163 West 125<sup>th</sup> Street, 17<sup>th</sup> Floor, New York, New York.

**Audio Only Connectivity Information:**

Join by phone, audio only:

- +1 929 205 6099 US (New York)
- +1 646 931 3860 US

Meeting ID: 865 7903 5479

Passcode: 407083

Please note that directors joining the meeting via telephone audio cannot be counted for establishing a meeting quorum or for voting.

The agenda and board materials to be considered at the meeting are attached.



**Harlem Community  
Development  
Corporation**

**BOARD OF DIRECTORS' MEETING  
Wednesday, December 13, 2023  
10:00 A.M.**

**AGENDA**

**FOR CONSIDERATION:**

Victoria Theater Redevelopment Project – Ratification of Authority to Enter into Lease/Operating Agreement with the Apollo Theater Foundation, Inc.; and Authorization to Take Related Actions

**ADJOURNMENT**



**FOR CONSIDERATION**

December 13, 2023

TO: The Directors

FROM: Curtis Archer

SUBJECT: Victoria Theater Redevelopment Project – Lease/Operating Agreement for Cultural Unit

REQUEST FOR: Victoria Theater Redevelopment Project – Ratification of Authority to Enter into Lease/Operating Agreement with the Apollo Theater Foundation, Inc.; and Authorization to Take Related Actions

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**I. Project Summary**

The Victoria Theater is located at 235-237 West 125<sup>th</sup> Street, and is owned by Harlem Community Development Corporation (“HCDC”). The Victoria Theater Redevelopment Project (“Victoria Project”), currently scheduled for completion in November 2023, is a \$164 million project focused on transforming the long-vacant Victoria Theater premises into a 385,000-square foot and 27-story mixed-use development. In 2012, HCDC and its parent corporation, New York State Urban Development Corporation d/b/a Empire State Development (“ESD”) adopted a General Project Plan (“GPP”) for the Victoria Project, and a Modified General Project Plan (“MGPP”) was affirmed in 2013.

The Victoria Project consists of a full-service hotel with approximately 211 keys; approximately 191 affordable and market-rate residential rental apartments; 25,000 square feet of retail space; and 27,000 square feet of Cultural Arts Space (“Cultural Unit”). The Victoria Project will be operated as a condominium with HCDC as the owner of the Cultural Unit’s condominium unit. The Developer, 233 West 125<sup>th</sup> Street Danforth LLC (“Danforth”), pursuant to a development lease between Danforth and HCDC (“Development Lease”), is obligated to construct the Victoria Project, including the buildout of the core and shell of the Cultural Unit. On June 23, 2015, the HCDC Directors conditionally designated Apollo Theater Foundation, Inc. (“Apollo”) as the Operator/Manager of the Cultural Unit at the Victoria Project.

At an HCDC Board meeting convened on July 19, 2019, the HCDC Directors authorized HCDC to officially designate Apollo as the Operator/Manager of the Cultural Unit at the Victoria Project, and to enter into a lease/operating agreement with Apollo based on terms and conditions substantially in accordance with those presented for review at the 7/19/19 meeting. Although the materials presented at the 7/19/19 meeting indicated, among other things, that the Victoria

Project was scheduled for completion in 2019, constructions delays and related circumstances have resulted in materially changed circumstances and a late-2023 projected completion date that collectively warrant re-examination and re-structuring of the proposed essential terms and conditions for the lease/operating agreement between HCDC and Apollo, as identified below.

At the HCDC Board meeting convened on July 17, 2023, the HCDC Directors authorized HCDC to enter into a lease and operating agreement with Apollo, on terms and conditions substantially in accordance with essential lease and operating terms presented for review at the 7/17/23 meeting. The HCDC Directors authorized HCDC to enter into a lease with Apollo but subject to a final ratification by the HCDC Board at a later date after the lease and operating agreement terms between HCDC and Apollo have been finalized.

## **II. Essential Lease/Operating Agreement Terms**

<b>LANDLORD:</b>	Harlem Community Development Corporation
<b>TENANT/OPERATOR:</b>	Apollo Theater Foundation, Inc.
<b>PREMISES:</b>	233-237 West 125 <sup>th</sup> Street New York, NY
<b>ANNUAL BASE RENT:</b>	\$1
<b>TERM:</b>	Commencing upon substantial completion of the Victoria Project and ending on November 15, 2083.
<b>PERMITTED USE:</b>	Theaters and offices for not-for-profit cultural arts organizations and related ancillary space in accordance with the operation of first-class performance and office space.
<b>DESIGN COSTS:</b>	Apollo agrees to pay certain architectural fees associated with preparing the plans and specifications for the core and shell, interior build-out and finishes of the Cultural Unit and for administering the construction thereof. The Developer's architect shall file the plans and will be the architect of record.
<b>VICTORIA THEATER CULTURAL PARTNERS:</b>	Tenant will use commercially reasonable efforts to provide space within the Cultural Unit, including the use of the theaters and office space, to local cultural groups based in the Harlem area (the "Cultural Partners") at cost and on terms and conditions mutually agreeable to Tenant and such Cultural Partners as are selected by Tenant and approved by Landlord, which approval shall not be

unreasonably withheld, conditioned or delayed. In no event however, shall any inability or failure to enter into any lease, sublease, license or occupancy agreement with any Cultural Partners be deemed or constitute a default under this Lease, provided, however, that Tenant shall have no obligation to make space available to Cultural Partners on such dates and times as events are already booked or planned to be booked by Tenant.

**CULTURAL UNIT  
PERMITTED USE:**

Tenant may use the Cultural Unit for general and executive offices and as a live theater and other performance space, film and media recording and performance space (e.g. film forum), rehearsal space, operation of cultural and arts programs and exhibitions, related office uses and uses ancillary thereto, for not-for-profit cultural arts organizations ("Permitted Use"). Furthermore, Tenant shall not use, or permit the use of, any portion of the Cultural Unit in any manner that might constitute a nuisance or result in hazardous conditions or unreasonable annoyance by odors, noises, lights or otherwise, to persons within the vicinity of the Cultural Unit provided however that it is expressly agreed that special effects lawfully used during performances shall not be deemed to violate the Lease.

Tenant shall not abandon the Cultural Unit. If the Cultural Unit is completely unoccupied and unused for a Permitted Use or if the Tenant has not used commercially reasonable efforts to use the Cultural Unit as a live theater or performance space, in either case, for any continuous period exceeding twelve (12) months for reasons other than Force Majeure, Landlord may terminate this Lease by giving Notice to Tenant.

**CONSTRUCTION BUDGET:**

Apollo commits to invest at least two million (\$2,000,000.00) dollars for the purchase and installation of furniture, fixtures and equipment ("FF&E") for the Cultural Unit.

**COMMON CHARGES:**

Tenant will be financially responsible for the common charges allocable to the Cultural Unit, except that Landlord will provide a supplemental rent credit ("Supplemental Rent Subsidy") for Tenant's common charges for the first six years of the Lease, to be applied against financial obligations for costs relating to operating expenses, repairs, replacement reserve assessments and other amounts due and owing from Tenant to Landlord. The Supplemental Rent Credit for the first year will be equal to Tenant's

actual common charges. For each subsequent year, the Supplemental Rent Credit shall escalate at 3% (compounding) per annum. Following the first six years of the Lease, commencing with the seventh year, Tenant will be responsible for 100% of the common charges allocable to the Cultural Unit. The Supplemental Rent Subsidy shall be payable quarterly by Landlord to Tenant within thirty (30) days after Tenant invoicing the Landlord for the same. The source of funding for the Supplemental Rent Subsidy is anticipated to be the Victoria Theater Investment Fund (BAP 249S) or the Victoria Theater Rent Account (BAP 204S).

**OPERATING EXPENSES:** Tenant will be responsible for all operating expenses related to the Cultural Unit, including but not limited to the cost of gas, electric, heat, hot water, cleaning, extermination, and trash removal.

**REPAIRS:** Landlord shall pay only once during the first five years of the term of the Lease for the cost of maintenance repairs of windows, electrical (except Common Elements), plumbing (except Common Elements), and heating and/or hot water fixtures and air conditioning units related to the leased unit and for all assessments related to maintenance, repair and replacement of common elements of the condominium. The funding source for the aforementioned repair costs is anticipated to be the Victoria Theater Investment Fund (BAP 249S) or the Victoria Theater Rent Account (BAP 204S). The cost and effectuation of all other repairs would be the responsibility of Tenant. Landlord agrees to consult with Tenant on repairs as needed.

**REAL PROPERTY TAX:** Any real property tax due on the Cultural Unit shall be the responsibility of the Landlord for the first twenty (20) years of the Term. HCDC as the owner of the Cultural Unit is currently exempt from real property taxes because HCDC is an ESD subsidiary and thereby statutorily exempt from such taxes.

**PILOT:** For so long as a not-for-profit arts organization is operating the space for qualifying cultural non-profit purposes, HCDC will not require the operator to make payments in lieu of taxes ("PILOT").

**INSURANCE:** Tenant, at its own expense, shall maintain insurance including general liability, property, business income, commercial automobile and worker's compensation insurance at industry-standard limits as required by HCDC.

**PUNCHLIST:**

Landlord and Tenant have conducted walk-throughs of the Cultural Unit and hereby confirm and agree that any punchlist items have been incorporated into a final punchlist report ("Punchlist Report"). Contemporaneously herewith, Landlord has entered into a post-closing punchlist escrow agreement ("Punchlist Escrow Agreement") with the Developer. The Punchlist Escrow Agreement provides that the Developer shall complete the items on the Punchlist Report, and cooperate and comply with all of Tenant's rules, requirements, criteria and schedule such that Developer's completion of the items in the unchlist Report shall not interfere with Tenant's operations, including any night time events.

**NAMING RIGHTS:**

Apollo shall have the right to name the Cultural Unit, including, without limitation, the theaters and lobby, stages, ticket booth or kiosk, gallery, concession area and all elements of the office space, subject to the approval of HCDC, such approval not to be unreasonably withheld, conditioned or delayed.

**PORTAL:**

Landlord hereby agrees that Tenant has the right to install signage, decorating, and advertising at and on the Portal, subject to Landlord's reasonable consent, the Condominium Documents, the rules and regulations of the Condominium, and the requirements of the New York State Office of Parks, Recreation and Historic Preservation. Tenant covenants to comply with any and all of the aforesaid requirements. Tenant, at its sole cost and expense, shall be solely responsible for all costs associated with the Portal Signage and shall maintain the Portal and the Portal signage in a good and first class condition.

**SIGNAGE:**

Landlord shall pay for the services of a third-party advisor and mediator ("Signage Consultant") to work with and mediate among the cultural, hotel and retail users for the sharing of time on the digital signs on the Victoria Theater façade, which include the digital marquee, the historic ticket booth and an exterior digital sign under the digital marquee. The funding source for the costs of the Signage Consultant services is anticipated to be the Victoria Theater Rent Account (BAP 204S), funded with rent payments made by Danforth to HCDC pursuant to the terms of the Development Lease. Landlord intends to modify the General Project Plan to include in the plan's general override of zoning and land use requirements for the Project a provision to allow for the hotel and certain other commercial uses to use the marquee in addition to the currently permitted use by the Cultural Unit.

Signage usage requirements will become a condominium's By-Laws provision which cannot be changed without the consent of the HCDC as the owner of the Cultural Unit.

### **III. Responsible Parties**

Pursuant to State Finance Law Section 139-j and 139-k and ESD's policies related thereto, staff has (a) considered the ability of Apollo Theater Foundation, Inc. to perform the services as set forth in these materials, and (b) consulted the list of offerers determined to be non-responsible bidders and debarred offerers maintained by the New York State Office of General Services. Based on the foregoing, staff finds Apollo Theater Foundation, Inc. to be responsible.

### **IV. Non-Discrimination and Contractor & Supplier Diversity**

ESD's Non-Discrimination and Contractor & Supplier Diversity policies will apply to this Project. The Recipient shall be required to include minorities and women in any job opportunities created, to solicit and utilize Minority and Women-Owned Business Enterprises (MWBEs) for any contractual opportunities generated in connection with the Project and shall be required to use Good Faith Efforts (pursuant to 5 NYCRR §142.8) to achieve an overall MWBE Participation Goal of 17% related to the cost of the construction of the core and shell, interior build-out and finishes.

### **V. Environmental Review**

ESD staff on behalf of HCDC has determined that the requested authorization constitutes a Type II action as defined by the New York State Environmental Quality Review Act ("SEQRA") and the implementing regulations of the New York State Department of Environmental Conservation. No further environmental review is required in connection with this authorization.

### **VI. Requested Actions**

The Directors are requested to ratify the 7/17/2023 authorization for the Corporation to enter into a lease and operating agreement with the Apollo, on terms and conditions substantially in accordance with those described in Section II herein. The Directors are further requested to authorize the President or his designee to take such related actions as necessary or required in connection with the lease and operating agreement.

### **VII. Staff Recommendations**

Based on the foregoing, staff recommends approval of the requested actions.

### **Additional Submissions to the Directors**

Resolution





December 13, 2023

**Victoria Theater Redevelopment Project – Ratification of Authorization to Enter into Lease/Operating Agreement with the Apollo Theater Foundation, Inc.; and Authorization to Take Related Actions**

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RESOLVED, that based on the materials presented at this meeting (the “Materials”), a copy of which is hereby ordered filed with the records of the Corporation, the Corporation hereby finds Apollo Theater Foundation, Inc. to be responsible; and be it further

RESOLVED, that the Corporation ratifies its authorization to enter into a lease/operating agreement with Apollo Theater Foundation, Inc. on terms and conditions substantially in accordance with those described in the Materials is hereby ratified; and be it further

RESOLVED, that the President, or his or her designee(s) be, and each of them hereby is, authorized to take such action and execute such documents as may be necessary or appropriate to carry out the foregoing Resolution.

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